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ROBERT OWEN LEHMAN FOUNDATION, INC.

ZIRKL, EVA
ISRAELITISCHE KULTUSGEMEINDE WIEN
BAR, MICHAEL
ROBERT RIEGER TRUST

Total Fees Paid: \$0.00

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State of New York

MONROE COUNTY CLERK'S OFFICE
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MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

ROBERT OWEN LEHMAN FOUNDATION, INC.,

Plaintiff,

- v -

EVA ZIRKL, ISRAELITISCHE KULTUSGEMEINDE WIEN,
MICHAEL BAR, and ROBERT RIEGER TRUST,

Defendants.

COMPLAINT

Index No. _____

Plaintiff, Robert Owen Lehman Foundation, Inc. (“Plaintiff” or the “Foundation”), a New York not-for-profit corporation, brings this Complaint against Defendants Eva Zirkl (“Zirkl”), Israelitische Kultusgemeinde Wien (“IKG”), Michael Bar (“Bar”), and Robert Rieger Trust (“Rieger Trust”) (collectively, “Defendants”), and alleges, through its counsel, Nixon Peabody LLP, upon information and belief as follows:

1. This case arises out of two separate, unsupported and contradictory challenges to Plaintiff’s good faith, public and undisturbed ownership of the gouache drawing *Portrait of the Artist’s Wife* (1917) 44 x. 28 cms., by Egon Schiele (the “Drawing”). Attached as **Exhibit A** is a true and correct copy of an illustration of the Drawing.

2. Plaintiff and its founder, Robert Owen Lehman (known as Robin Lehman, and referred to herein as “Lehman”) – both of whom reside in Monroe County, New York – have owned the Drawing in good faith and without challenge since 1964, when Lehman purchased the Drawing at the esteemed Marlborough Fine Art Gallery in London, U.K.

3. In March 2016, Lehman gifted the Drawing to Plaintiff, a charitable grant making foundation, with the intention that Plaintiff would sell the Drawing and use the proceeds to, among other things, promote the appreciation and public awareness of classical music and

encourage the creation of new artistic work including musical composition.

4. Around the same time, the Drawing was consigned to Christie's auction house in New York, for sale to fund the Foundation's grant making.

5. As discussed below, Defendants have since made two separate and competing claims to ownership of the Drawing. As a result, Christie's has held up the sale of the Drawing, preventing the Foundation from fulfilling its mission.

6. Defendants' competing claims are both based on allegations that an Austrian ancestor once owned the Drawing, but that it was taken from them during the Nazi regime. Both of the respective ancestors perished in the Holocaust.

7. However, the documents Defendants have provided do not support their claims that certain ancestors owned the Drawing, or that it had been unlawfully taken during the Nazi regime.

8. Plaintiff has rejected Defendants' unsubstantiated and contradictory claims.

9. Despite rejecting the claims, and even as they remain unsubstantiated for over three years, Lehman recently, and in a good faith effort to avoid the need for legal action, offered to work with all parties to achieve a fair and just resolution.

10. But, IKG has refused to participate in any negotiations with defendants Bar and Rieger Trust, who jointly presented a competing claim for the Drawing.

11. Plaintiff is unable to move forward with its planned sale of the Drawing until these disputed claims to ownership are resolved.

PARTIES

12. Plaintiff is a 501(c)(3), not-for-profit corporation and charitable grant making foundation established to support appreciation of classical music, among other things, and is located at 3487 East Avenue, Rochester, New York.

13. Plaintiff is the current owner of the Drawing.
14. Plaintiff was created on August 10, 2012. Lehman is one of the directors of Plaintiff. Lehman resides at 3487 East Avenue, Rochester, New York.
15. Upon information and belief, Defendant Zirkl resides in New York, New York.
16. Zirkl claims to be the heiress to Austrian art collector Karl Maylander, and as a result of that relationship, she alleges an ownership interest in the Drawing.
17. Upon information and belief, Defendant IKG is an organization located in Vienna, Austria that, among other things, asserts restitution claims on behalf of Austrian claimants.
18. Upon information and belief, IKG is representing the interests of Zirkl in her claim to the Drawing.
19. Upon information and belief, Defendant Rieger Trust is a trust established under the laws of the State of New York.
20. Rieger Trust claims to be a successor to Austrian art collector Dr. Heinrich Rieger, and as a result of that relationship, Rieger Trust alleges an ownership interest in the Drawing.
21. Upon information and belief, Defendant Bar is a resident of Israel.
22. Bar also claims to be an heir to Austrian art collector Dr. Heinrich Rieger, and as a result of that relationship, Bar alleges an ownership interest in the Drawing.

VENUE AND JURISDICTION

23. This Court has personal jurisdiction over defendants Zirkl and Rieger Trust, who, upon information and belief, are both residents of the State of New York.
24. This Court also has personal jurisdiction over defendants IKG and Bar, as each has, individually or through their agent, transacted business in the State of New York out of

which the claims asserted in this action arose. Each of these Defendants, individually or through their agent, sent letters into New York and communicated with persons in New York in their efforts to make competing claims over the Drawing, which is located within the State of New York.

25. Venue is proper in this County, where Plaintiff resides.

FACTS

Lehman's Purchase of the Drawing

26. In 1917, Austrian artist Egon Schiele prepared the Drawing, a gouache and black crayon illustration of his wife, titled *Portrait of the Artist's Wife* (1917) 44 x 28 cms.

27. In 1964, the Drawing was part of a public exhibition at the Marlborough Fine Art Gallery in London, U.K. The Drawing was previously owned and held by the Galleria Galatea in Turin, Italy.

28. In 1964, Lehman purchased the Drawing from the Marlborough Gallery.

29. At the time of his purchase, Lehman was not made aware of any adverse claims of ownership to the Drawing.

30. There was no evidence, or publicly available information, that the Drawing has possibly been the subject of Nazi looting.

31. Lehman would not have purchased the Drawing if he had been made aware of such information.

Lehman's Undisturbed and Unchallenged Public Ownership of the Drawing

32. Lehman owned the Drawing for over 50 years.

33. Lehman's long time ownership of the Drawing was published with an illustration in 1990 as part of *Egon Schiele, The Complete Works* (New York: Harry N. Abrams, item 1908, p. 572), a comprehensive catalogue raisonné of Schiele works by noted expert Jane Kallir.

34. The entry for the Drawing identified Robin Lehman as the current owner, and also identified the Marlborough Fine Art Gallery and the Galleria Galatea in Turin, Italy, as prior owners.

35. The entry also notes that the Drawing was part of an exhibition at the Marlborough in London in 1964.

36. This publication is an essential and widely available reference book for any person interested in works by Schiele.

37. At no time during his ownership, before or after the 1990 publication of the Schiele catalogue raisonné, did anyone claim ownership or seek restitution of the Drawing.

38. Lehman owned the Drawing from 1964 until March 2016, when he gifted it to Plaintiff Robert Owen Lehman Foundation.

39. Lehman helped establish Plaintiff Foundation for the purpose of, among other things:

- a. promoting appreciation of the art of classical music, in isolation or as it relates to other arts (such as literature, film, sculpture, and painting);
- b. stimulating public awareness, interest, and enjoyment of classical music; and
- c. encouraging the creation of new artistic work, including music composition and its performance.

40. The directors of Plaintiff Foundation, including Lehman, wished to sell the Drawing and use the proceeds to support the Foundation's objectives, including the support and promotion of classical music.

41. To achieve those objectives, the Drawing was consigned to Christie's, the auction house in New York, in March 2016.

Defendants' Competing Claims to Ownership of the Drawing

42. Twenty-six (26) years after Lehman's ownership of the Drawing was openly publicized in the 1990 catalogue raisonné, and after he transferred ownership of the Drawing to help fund the Foundation in its mission, two competing adverse ownership claims were made. Both claims were made by the heirs of separate Austrian art collectors.

43. On or about July 6, 2016, Defendant IKG sent a letter to Lehman asserting a claim on behalf of an unidentified client referred to only as the "heir of Karl Maylander", based on the contention that Karl Maylander once owned the Drawing and that it was unlawfully taken from him during the Nazi regime.

44. IKG concluded its letter to Lehman with the following: "Although we have formally notified Christie's of our claim for restitution of the "Portrait of the Artist's Wife" of 1917, the heir of Karl Maylander would consider a fair and reasonable resolution of this matter."

45. The documents provided by IKG do not show that Karl Maylander actually owned the Drawing, or that it was unlawfully taken from him.

46. Upon information and belief, IKG has withheld from Lehman and Plaintiff some of the relevant documents that it has.

47. Upon information and belief, Zirkel is the client on whose behalf IKG is making a claim to the Drawing.

48. On August 31, 2016, Defendants Rieger Trust and Bar, through the German law firm of Rosbach & Frey, sent a letter to Christie's claiming they were the lawful owners of the Drawing.

49. Both Rieger Trust and Bar claim that their rights flowed from the Austrian art collector Dr. Heinrich Rieger.

50. The August 31, 2016 letter concluded with the following: “Our clients being the heirs of Dr. Heinrich Rieger are very much willing to reach an agreement with the consignor of this artwork. We are willing to discuss this with the present owner and the IKG who represented our clients before.”

51. The documents provided by Rieger Trust and Bar do not show that Dr. Heinrich Rieger actually owned the Drawing, or that the Drawing was unlawfully taken from him.

52. Both Karl Maylander and Dr. Heinrich Rieger were killed during the Holocaust.

53. Lehman himself is of Jewish heritage, and is keenly aware of and sensitive to the atrocities of World War II, including Nazi theft of art held by Jewish people.

54. However, the claimants were, and remain, unable to substantiate their claims to the Drawing, and their representatives have failed to provide documents that support either of their competing claims to ownership of the Drawing.

55. Accordingly, Plaintiff rejected the claims.

56. Lehman has recently made a good faith effort to organize a group discussion amongst Plaintiff and both groups of claimants in an attempt to reach a fair and just resolution.

57. IKG refuses to participate in any negotiations with the heirs of Dr. Heinrich Rieger.

58. On at least one prior occasion, IKG represented the heirs of Dr. Heinrich Rieger on a claim for restitution of a drawing by Egon Schiele. That relationship has apparently ended, and IKG not only refuses to negotiate with the Rieger heirs in this matter, but, upon information and belief, is withholding certain documents from Lehman.

59. As a result of the competing but unsubstantiated claims for restitution made by Zirkl, IKG, Rieger Trust, and Bar, Plaintiff has been unable to resolve Defendants’ claims or the

question of ownership of the Drawing.

60. Until the claims of ownership of the Drawing are resolved, Plaintiff cannot proceed with the sale of the Drawing.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

61. Plaintiff realleges and incorporates herein each and every allegation contained in Paragraphs 1-60 above, as if fully set forth herein.

62. An actual controversy between the parties exists over the ownership and title of the Drawing.

63. Plaintiff is entitled to a declaratory order from this Court that it is the rightful owner of the Drawing.

64. Plaintiff is entitled to a declaratory order from the Court that Defendants do not have any valid claims to the Drawing.

SECOND CAUSE OF ACTION
(Order Quietening Title)

65. Plaintiff restates and realleges the allegations set forth in Paragraphs 1-64 above, as if set forth in full herein.

66. By virtue of all the foregoing, Plaintiff is entitled to an order from this Court removing the cloud upon Plaintiff's valid title to the Drawing that exists by virtue of Defendants' claims

67. Plaintiff is also entitled to an order from this Court quieting Plaintiff's title to the Painting.

THIRD CAUSE OF ACTION
(Injunctive Relief)

68. Plaintiff restates and realleges the allegations set forth in Paragraphs 1-67 above,

as if set out in full herein.

69. By virtue of the foregoing, Plaintiff is entitled to an order from this Court permanently enjoining Defendants, and their agents and representatives, from threatening and/or instituting any legal or other actions against Plaintiffs and/or any of its agents or representatives regarding the Drawing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that that the Court enter judgment in favor of Plaintiff as follows:

- (1) An order and judgment that Defendants do not have any valid claims to the gouache drawing *Portrait of the Artist's Wife* (1917) 44 x 28 cms., by Egon Schiele;
- (2) An order and judgment that Plaintiff is the rightful owner of the gouache drawing *Portrait of the Artist's Wife* (1917) 44 x 28 cms., by Egon Schiele;
- (3) A permanent injunction enjoining Defendants, and each of them and their respective representatives and agents, from threatening and/or instituting any legal or other action against Plaintiff and/or any of its agents or representatives regarding the gouache drawing *Portrait of the Artist's Wife* (1917) 44 x 28 cms., by Egon Schiele;
- (4) A judgment awarding costs and attorneys' fees to Plaintiff; and;
- (5) A judgment for such other and further relief in law or equity as this Court deems just and proper.

Dated: September 18, 2019

NIXON PEABODY LLP

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